IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 423 (S/S) of 2005
(Old No. 749 of 1989)

1. Jai Prakash
   S/o Pitamber Singh
   R/o Village Chawar
   Post Office Malakpur
   District Moradabad.
2. Anil Kumar Mishra
   S/o Nand Kesh Mishra
   R/o Village Purshottampur
   Post Office Jaisinghpur
   District Sultanpur.
3. Surendra Singh
   S/o Kripal Singh
   R/o Village Sahwajpurkala 9719963941
   Post Office Rajabpur
   District Moradabad.

…….Petitioners.

Versus

1. The Co-operative Cane Development Union
   Ltd. Kichha, District Nainital
   Through its Special Secretary.
2. The District Cane Service Authority
   Nainital.
3. The Deputy Cane Commissioner
   Moradabad.

……Respondents

Sri Arvind Vahsitha, learned counsel for the petitioners.
Shri. H.M. Raturi, learned Standing Counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, the petitioner has sought writ in the nature of certiorari quashing the order dated 30.12.1988, passed by respondent No. 1, terminating the services of the petitioners.

2. Heard learned counsel for the petitioners and perused the papers on record.

3. Brief facts of the case, as narrated in the writ petition are that petitioners were appointed as Seasonal Clerks on 01.07.1986 under U.P. Cane Co-operative Service Regulations, 1975, and they joined their duties at Co-operative Cane Development Union, Chandausi, District Moradabad. By the order dated 13.01.1987, passed by Secretary of the Regional Cane Service Authority, Moradabad, the petitioners were transferred as Seasonal Clerks to Co-operative Cane Development Union, Kichha, District Nainital (now District Udam Singh Nagar). Consequently, the petitioners joined their duties at the new destination and started working as Seasonal Clerks. It is pleaded by the petitioners that during crushing season of 1987-88 with Co-operative Cane Development Union, Kichha, they were placed in category ‘A’, as provided by the aforesaid Regulations of 1975. Therefore, they were automatically called back for the next season i.e. crushing season of 1988-89. However, vide impugned order dated 30.12.1988, passed by Special Secretary, Co-operative Cane Development Union Kichha, services of the petitioners were abruptly terminated w.e.f. 05.01.1989. It is further pleaded in the writ petition that Special Secretary of the Union was not competent to terminate the services of the petitioners as their appointing

authority was District Cane Service Authority. Challenging the impugned order, as arbitrary and illegal, it is further stated in the writ petition that circular order dated 26.10.1986, passed by Cane Commissioner, whereby a ban was imposed for two years in new appointments, does not cover the cases of the petitioners, as they were appointees prior to 26.10.1986 and not thereafter. With these averments, the impugned termination order is sought to be quashed by filing the writ petition before Allahabad High Court on 12.01.1989. The Allahabad High Court stayed the operation of the order dated 30.12.1988 on that very day. The writ petition is received by this Court under Section 35 of U.P. Reorganisation Act, 2000 for its disposal.

4. Since 1989, no counter affidavits are filed on behalf of the respondents either before Allahabad High Court or before this Court. It is pertinent to mention here that after this case is received by transfer, fresh notices were sent to the parties.

5. Learned counsel for the petitioners drew attention of this Court to Rule 34 of U.P. Cane Co-operative Service Regulations, 1975, which reads as under:-

"34. Termination of service-*The services of a seasonal employee may be terminated by the recruiting or appointing authority at any time on a week's notice or with a week's salary in lieu thereof. This provision shall not apply in case of*

termination as a result of disciplinary proceedings or termination at the close of the crushing season."

6. It is argued on behalf of he petitioners that under that Regulations, services of the petitioners could have been terminated only under Rule 34. It is further stated that neither any disciplinary proceedings were drawn against the petitioners nor the crushing season was over nor any notice or salary in lieu of notice as required under Rule 34 was given to the petitioners. The impugned order, terminating the services of the petitioners is being reproduced below:-

''श्री सुरेन्द्र सिंह, जय प्रकाश सिंह एवं अनिल कुमार मिश्र सामचिक लिपिक जिनकी नियुक्ति जिला गन्ना अधिकारी मुरादाबाद के आदेश संख्या–1037/ सी दिनांक 1.7.1986 द्वारा बेलेन्शसीट बनाने हेतु की गयी थी तथा कालान्तर में इस समिति में स्थानीय होकर आये थे की सेवाओं की अब और आवश्यकता न होने के कारण इन्हे दिनांक 5.1.89 के बाद दोपहर से समिति के कार्यभार से मुक्त किया जाता है। इन्हे आदेश दिया जाता है कि वह अपना सम्पूर्ण चार्ज स्थापन लिपिक को देदें।''

The above order appears to have been passed on 30.12.1988. It is not clear on which date, said notice was served on the petitioners. Assuming for a moment that at ht earliest the order was served on the very day i.e. 30.12.1988 even then by noon of 05.01.1989, seven days period was not over. As such, it cannot be said that the termination was made in accordance with the Rules by which the services of the petitioners were governed.

7. In the circumstances, since, nether the impugned order was result of any disciplinary proceedings, nor was it the result of closure of crushing season, nor the mandatory notice of seven days, as required under Rule 34, was given to the petitioners, as such the impugned order suffers from illegality, therefore, the writ petition deserves to be allowed. The writ petition is allowed. The impugned order dated 30.12.1988, passed by respondent No. 1, is quashed. Otherwise also, since under the interim stay order passed by Allahabad High Court, the petitioners continued in service in the crushing season of 1987-88 which is now already over, as such the impugned order has now lost its significance.

Dt.24.10.2007 **(Prafulla C. Pant, J.)**

S